



Federal Register Update

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Agency Liaison Officers Meet at Office of the Federal Register

On August 16, 1978, 30 liaison officers representing over 20 government agencies met with the Director of the Federal Register (Director) and other Office of the Federal Register (OFR) staff members.

OFR invited the liaison officers to attend the informal meeting to discuss with them the critical role liaison officers should play within their agencies in directing and implementing the regulatory reforms mandated by Executive Order 12044 (EO 12044).

The Director welcomed the group and presented OFR's view of what changes could be expected in the Federal Register publication system as a result of the Regulations reform movement. The Director concluded by describing the functions of a liaison officer, and asking each of the participants to examine his or her own perception of the job in light of the Director's comments. Other OFR officials then conducted the meeting which focused on several areas of mutual concern.

After discussing EO 12044 and its impact, OFR presented its own proposals for improving government regulations. (These proposals were published by the Administrative Committee of the Federal Register on May 22, 1978 at 43 FR 21995.) Among the changes under consideration are a restructuring of the arrangement of the **Code of Federal Regulations** titles, organizing the daily **Federal Register** by agency rather than by type of document, and expanding the daily **Federal Register** table of contents to include subject categories as well as agency headings. Several of the agency participants took part in a discussion of these proposals and the possible

impact on their operations if the proposals are implemented. One potential feature of an agency-organized daily issue that met with approval was the possibility of having selective subscriptions to portions of the daily Federal Register. At present, the only subscription available is to the entire Federal Register which runs over 60,000 pages a year. Some participants were concerned that adding subject categories to the present table of contents could be misleading and might actually decrease the value of that finding aid by adding too many entries to it, possibly requiring the user to look in several places for all of the documents issued by a single agency. It appeared to be the consensus of the group that it would be better to continue the present agency-organized listing and to add a separate listing of categories.

The liaison officers were briefed on what services and programs of OFR were available to them. Among these programs are the public briefings on how to use the OFR publications and the legal drafting workshops for agency personnel. (See UP-DATE, Vol. I, No. 1 for details.) OFR announced a new one-half day program specifically designed to train newly appointed liaison officers in how to carry out their duties. (For information on this program, call OFR's Special Projects Unit, 523-4534).

To give OFR a better understanding of the issuances process in each agency, the liaison officers were asked to outline the development of a typical regulation within their agency.

The meeting concluded with a review of the status of the automation project on Federal Register publications. The possibility of establishing a direct telecommunications link between the agencies and the Government Printing Office (GPO) for processing of the Federal Register documents was raised, and the liaison officers were asked to respond to a questionnaire that would give GPO an idea of each agency's present or planned word processing capability.

Better Subject Headings Can Result in Better Subject Indexes

An agency's responsibility for the ready availability of its regulations involves more than publication of a document in the **Federal Register**. Agencies have a continuing responsibility to make sure that their regulations are always readily accessible to affected individuals. A person learning for the first time that his/her business, other activity, or course of conduct is subject to specific Federal regulations should not have excessive difficulty in identifying those applicable regulations nor should it be necessary to hire a

lawyer to find out where in the Code of Federal Regulations (CFR) those regulations are.

Yet, unfortunately, all too often, this is the case. The best time for providing the public with ready access to regulations is at the time the regulations are written. One way this can be done is by maintaining an organized, coherent set of regulations and by supplying informative, relevant subject headings to sections, parts, or groups of sections and parts of the regulations that are being drafted.

There are many techniques for grouping units of regulations under common subjects and writing descriptive regulations. Federal Register staffers are available to describe any of these techniques in detail or to make recommendations to agencies that are in the process of issuing new or rewriting existing regulations.

Some agencies are already grouping their regulations in a logical, useful fashion. For example, the Federal Aviation Administration, DOT, (14 CFR, Chapter I). Their skillful use of subchapter headings to group related regulations results in a coherent, easy-to-identify body of regulations. Others using this technique are Food and Drug Administration, HEW, (21 CFR, Chapter I), and Department of State (22 CFR, Chapter I).

Skimming through the CFR volumes it is much easier to identify instances of less than helpful groupings of regulations, for example, Immigration and Naturalization Service, Department of Justice. The bulk of their regulations are grouped under two subchapters: Immigration regulations and Nationality regulations. When you consider the issuing agency, this grouping does not provide any more information than is already available in the agency's name. Also of dubious benefit is the grouping made by the Office of Education, HEW, which groups over 100 parts in (45 CFR, Chapter I) under the heading, Subchapter B-Program Regulations. (These are just a few examples selected at random).

Good organization and meaningful headings will also help indexers in the Office of the Federal Register to prepare better and more timely indexes. Over the years, the OFR has exercised the responsibility for providing subject indexes to the **Federal Register** and **CFR**. However, the growth in volume and complexity of government regulations in recent years has made it increasingly difficult for the OFR to provide individuals with the ease of access to regulations which they have a right to expect. More and more, OFR will be relying on agency personnel with subject knowledge to provide the initial classifying of the regulations for **FR/CFR** indexes. This may include requiring agencies to add indexing terms to documents submitted for publication in the **Federal Register**. The General Accounting Office

and the Employment Standards Administration, Department of Labor, are two agencies which now prepare Table of Contents entries for their documents in the daily *Federal Register*. Several other agencies also furnish subject indexes to be published with their regulations in the *Code of Federal Regulations*.

One final point for agencies to remember is that in reviewing existing regulations as required by section 4 of EO 12044, they should also consider whether ready access is provided to the regulations through existing indexes. If not, plans should be made to prepare effective indexes. OFR will provide guidance and assistance whenever possible. Call Carol Mahoney, 523-3408.

Guide to Freedom of Information Indexes

What are the most recent findings set out in the annual report to Congress regarding smoking and health? What is the current policy position of the Council on Environmental Quality on nuclear power? Where can the published and unpublished decisions of the Equal Employment Opportunity Commission be inspected? If you're looking for answers to these and similar questions which can be found in records kept by Federal agencies, you should be using the Guide to Freedom of Information Indexes. The Guide, published for the first time in 1975 in the daily issue of the *Federal Register*, is now published in the *Federal Register Quarterly Index* which is published at the end of the calendar quarter. This Guide contains information submitted by the various departments and agencies to the Office of the Federal Register (OFR) each quarter and lists the titles of the indexes maintained by the agencies under the Freedom of Information Act (FOIA) (5 U.S.C. 552). In addition to index titles, it identifies the period covered by the indexes and sets out a brief description of the contents of the indexes. If you are interested in ordering a copy or if you wish to inspect the index, the price and the address is shown in the Guide.

The FOIA (1967) requires agencies to maintain and make available for public inspection and copying current indexes which provide information to the public regarding any matter issued, adopted, or promulgated after July 4, 1967 and which is required to be made available or published under the act. Certain amendments, enacted in 1974, require the publication (with some exceptions) and distribution of these indexes at least quarterly. If an agency determines that publication of the index would be impracticable for reasons such as lack of public interest or because it is subject to constant change, a

notice to that effect must be published in the *Federal Register*. The Guide is a finding aid which serves as a vehicle for the agencies to publicize the existence and availability of the FOIA indexes. It should be noted, however, that the agencies are not required to submit this information to the OFR but do so voluntarily and are encouraged to do so. In calendar year 1975, the number of agencies publishing FOIA index guides in the *Federal Register* totalled 56. In 1977 the number had increased to 125.

Comments on the format of the Guide are welcome and may be submitted to the Office of the Federal Register, National Archives and Records Service, Washington, D.C. 20408.

Plan Ahead for Publication

Do you want your document published on a certain date? If so, you need to plan ahead because it is not always easy to predict a particular date. There are many factors that could affect how much time is needed for publishing.

It may take more than three or four days to publish a document if the document is a very long one. In September a document was published that was 274 *Federal Register* pages long. For the Government Printing Office this document equaled printing a second *Federal Register* on that day. This document was actually printed as a second book of the *Federal Register* on that day and because of the backup in the bindery, GPO was not able to mail out all of the second books at the same time as the first book. Many subscribers did not receive the second book until several days later. These delays occurred in spite of the fact that the document was received by GPO on computer tape that was compatible with the GPO system and the document was received 10 days before publication.

It may also take more than three or four days to publish a document if the agency wants some special service in typography or design. These requests mean that GPO can't use its usual computer program and the document has to wait while documents that require no special handling are published in a timely fashion.

It may take longer than three or four days to publish a document if it needs special handling and it arrives at GPO during one of GPO's very busy times of the year. GPO is very busy when Congress adjourns and a lot of Congressional bills are passed that must be printed. It is also very busy from mid-December through mid-January when the budget is being printed.

Many documents are delayed because they don't comply with the regulations of the Administrative Committee of the Federal Register. The most frequent problem is a final rule or proposed rule document with a summary statement that is not brief or clear or that does not answer these three questions: "What action is being taken?"; "What circumstances created the need for the action?"; and "What is the intended effect of the action?" (1 CFR 18.12). Sometimes delays occur when documents contain confusing or improper amendatory language or when information like the effective date, comment date, authority citation, name and phone number of the person to contact has been omitted. Delay may occur if the document arrives on a day when a very large number of documents are received at the Office. Last May a new high point was reached. In one day 514 documents were received and 64 documents would have had to be processed each hour for all the documents to be published in three or four days.

How can you increase the odds that your document will be published on a certain date? Consult the staff at the Office of the Federal Register early. Early may mean many months before the publication date so that you will have time to adjust your work schedule

to allow enough time for the document to be published. The OFR staff will ask you how long your document may be, will it contain charts or pictures or require some special typography, will you be asking GPO to keyboard all the text, run a computer tape, or photograph your document pages, and what your target date for publication is. You can ensure compliance with the requirements of the Administrative Committee of the Federal Register by asking the staff at the Office of the Federal Register to check the document before it goes through the last stage of your agency review process. That way, errors can be quickly corrected before the final signature and a delay will not occur after the document has been received by the Office of the Federal Register.

Remember: if you want your document to be published on a certain date, consult with the Office of the Federal Register early so that you can allow ample time for publication.

For an estimate on publication time, call Scheduling on 523-3187.

For compliance with Federal Register regulations, call Special Projects on 523-4534.

Daily Newspapers to Feature Federal Register Highlights

Thanks to the efforts of the Federal Executive Boards in their area, several major newspapers around the country are doing their part to "get the word out" about certain Federal regulatory activities.

By publishing excerpts from the "highlights" feature of the **Federal Register**, the **Seattle Times** and other newspapers hope to "increase public awareness of, and participation in, the government's rulemaking process."

The "highlights" feature was included in the **Seattle Times** starting in 1977 at the suggestion of the Seattle Federal Executive Board. Patrick R. Brito, Executive Director, told us that the new feature "is being enthusiastically received in our area." Because of its success in Seattle, Mr. Brito urged other Federal Executive Boards around the country to join the program. As a result, the feature is also carried in the **Tacoma, Washington News Tribune**, the **Baltimore Evening Sun**, and the **Miami Neighbors**, an enclosure of the **Miami Herald**.

Recently, the Federal Executive Board in Cleveland asked the assistance of the Office of the Federal

Register in setting up a program for the **Plain Dealer**, the major morning newspaper in the Cleveland area. Although the feature is not yet printed, Mary Jones, Executive Director, has high hopes that she can get a commitment soon.

Currently, there are Federal Executive Boards in 26 major metropolitan areas and one of the main purposes of this interagency program is to act as a focal point in concentrating Federal resources in response to community-metropolitan needs.

By promoting local interest in the **Federal Register** through publication of highlights excerpts, these Boards and the newspapers in their areas are providing a valuable public service.

Managing Public Comment

An important trend in regulatory reform is the increased attention and emphasis on public participation in notice and comment rulemaking. President Carter, in Executive Order 12044, directed agencies to develop and use new methods in encouraging public response. Congress, in writing new legisla-

tion, frequently specifies steps the agency must take in soliciting public participation. Finally, the courts are increasingly critical in examining the extent and adequacy of agency practices in considering public response. The increasing emphasis on public participation creates added problems for the agencies in analyzing and responding to public comment.

Efficient management and a well organized system are vital to comment analysis in notice and comment rulemaking. Good comment analysis will benefit the agency as well as the public by improving the substance and acceptability of the regulation. Systematic comment analysis assists the agency in—

1. Evaluating public response to the proposed regulations;
2. Responding to public comment in the final rule preamble;
3. Documenting agency consideration and disposition of each comment received; and
4. Monitoring the conduct and progress of comment review during the rulemaking proceeding.

The Food and Nutrition Service, USDA, developed a comment analysis system for use in responding to comments received concerning the regulations implementing the Food Stamp Act of 1977 (43 FR 47846, October 17, 1978). This system allowed FNS to effectively analyze about 19,400 pages of comments from 7,828 organizations or individuals, raising 38,783 specific points. FNS received 2,568 different letters, many 50 pages or longer, containing detailed recommendations and criticisms. The agency was able to accomplish comment analysis in a three week period between the comment closing date and submittal of the completed analysis to the drafting team. This allowed the agency to prepare and publish the final rule document four months after the comment period ended.

The Food and Nutrition Service established a Comment Analysis Group to analyze, group, and summarize public response to the proposed regulations. The agency regarded project staffing as a key in assuring project success. The nature of the work required high level program people capable of making policy decisions. FNS took pains to assign enough knowledgeable and competent people to adequately perform the work. The analysts assigned to the group were all policy personnel with knowledge and experience in the Food Stamp Program.

The Comment Analysis Group was headed by Carol Stobaugh. Carol developed and refined the processing system based on her experiences in working with comment analyses prepared by the regional offices resulting from hearings held on the Food Stamp Program before proposed rule publication. The analysis group included a secretary and from 10

to 24 analysts. The number of analysts varied with the workload at different stages of the project. The Office of the General Counsel was available for questions and guidance on legal procedure and sufficiency.

The analysis process developed by the Food and Nutrition Service contains several distinct steps. As each comment letter was received it was recorded and assigned control numbers. Each letter was given a consecutive number for identification purposes and a code number that represented the category of the commenter. The date the letter was received was stamped on the first page of the comment. The consecutive number, date, code number, the commenter's name and address, and the analyst's name were all recorded on a central control log. At this point, the incoming correspondence was screened to filter out any letters which were not comments on the proposed regulations.

After recording and screening, the comments were distributed among the available analysts on a random basis. No attempt was made to specialize by subject matter at this point. Each letter was read by an analyst. The analyst would isolate the specific points made in the comment letter and categorize each point by the section of the proposed regulations it addressed. These specific points were condensed as necessary and entered on a summary sheet designated for the regulatory section involved. In order for the system to work, the comments had to be refined into small enough elements to allow the analysts to evaluate them effectively.

The analyst would then record all subsequent comments on that section on the same summary sheet. Different points were entered separately and identical comments were recorded on a tally sheet. When this process was completed, each analyst had a summary sheet for each section of the proposed regulations on which comments were made. This meant that there could be as many as 24 summary sheets for any section of the proposed regulations.

The next step in the process was combining the collected information into more manageable packages. One analyst would receive all the summary sheets on certain regulatory sections. The analyst would then combine and condense all the different points made on the summary sheets on a master summary sheet. Again, the analyst would enter the substance of repetitive comments once on the master summary sheet and maintain a record of the number and category of commenters that supported the position. At the end of this process, all the comments on each section of the regulations were included on the master summary sheet.

When the master summary sheets were completed,

they were given to the Drafting Task Force for use in evaluating and adjusting the proposed regulations and preparing the final rule preamble. The drafters evaluated the master sheets and, where necessary, requested that certain complex master sheets be reorganized to present the material in different subject or issue order to facilitate preamble drafting. This reorganization did not incorporate any additional material, it merely rearranged existing material to accommodate drafting and policy goals. The drafters were able to write the final rule preamble from the master summary sheets. Although the original comment letters were available for reference and used to obtain examples and quotations, they were not needed by the drafters for substance.

The final step in the analysis was the wrap up and reporting stage. The major comments on each individual subject were summarized in narrative form. These summaries were intended for use by others, not for use by the drafting team.

The facilities assigned to the Comment Analysis Group contributed to the successful completion of the project. The Food and Nutrition Service made a large conference room available for use by the analysts. By concentrating the work force in one room, the agency improved communication between the analysts. The analysts were able to discuss problems and new issues with one another. With everyone working from a common understanding of the issues, there was greater consistency in the analytical process.

This management system enabled FNS to process effectively the incoming comments and adequately respond to them in formulating the final rule. Any agency with a major rulemaking proceeding could adopt a similar system.

Anyone having questions concerning the processes or forms used by the Food and Nutrition Service in this comment analysis system may call Carol Stobaugh, Program Standards Branch, FNS, at 447-8351 or the Special Projects Unit, OFR, at 523-4534.

Recent Publications

On October 31, 1978, in a ceremony in the Oval Office of the White House, President Carter was presented with copies of the 1977 **Public Papers of the Presidents**.

This two-volume set, covering the first year of the Carter administration, is a milestone in the history of the Public Papers series marking the first time the series has included all material printed in the **Weekly Compilation of Presidential Documents**.

Besides resulting in increased coverage of the Presidency, this merger of the two series has eliminated duplication of editing, indexing, and proofreading and typesetting functions, thus allowing for more timely production of the **Public Papers** as well as reduced production costs. The costs savings in the 1977 volumes was approximately \$70,000, even with the expanded coverage involved.

Compiled by the Office of the Federal Register of the General Services Administration's National Archives and Records Service, all volumes in the **Public Papers** series are available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. Volume I of 1977 sells for \$16; Volume II sells for \$15.25.

Odds and Ends

A photographer from *Der Spiegel* magazine, which is published in the Federal Republic of Germany, recently visited the Office of the Federal Register. He came to photograph the 1977 issues of the **Federal Register** for a feature story on U.S. Government regulations soon to appear in *Der Spiegel*.

Where's Our Comment?

A paralegal working for a downtown D.C. law firm visited an agency docket room recently to go over comments on a rulemaking she was following. After she had gone through all the comments, she realized that her own firm's comment was not included anywhere in the docket although the firm had a receipt showing that the agency had received it. Could this have happened in your docket room?

In some agencies, at a minimum, each comment is stamped with the date received and given a log number, the log number and the writer's name and address are entered in a log book, and the comment is put into a locked file. Copies of 50 or so comments are bound together for public inspection. A copy of the pertinent part of the log book is included as a cover sheet in this binding to show how many comments are included and to identify the commenters. Tight bindings, not loose leaf notebooks or file folders, reduce the temptation to remove the comment rather than copy it. If something is missing, the cover sheet quickly identifies it and another copy may be made from the original comment.

OTHER TIPS ON HANDLING COMMENTS

Consider using a special mailing address for com-

ments on a rulemaking. This way you avoid having your routine mail mixed up with the comments. Also, ask commenters to put indentifying numbers or words on the envelope or letter to help you sort the comments for several rulemakings. One agency found out the hard way that controversial rulemakings need a special mailing address. (Did you ever try to look for a letter from Capitol Hill not on rulemaking in 6 mail bags of comments?)

Letters From Readers

I am writing to express my concern and sorrow about the use of the Federal Register Update as an instrument to bludgeon to death the "plain English" it was created to champion.

I think that a publication like Update is an excellent idea, and I think that you and your office can take a great deal of pride in the strides you have made toward improving the quality of the Federal Register. However, I am very worried by the use of computer jargon in Update.

Although I have misplaced issue number 1, I still remember the fingernails-on-the-blackboard feeling I got when I read the use of "keyboard" and "input" as verbs. Then along comes issue number 2, "Federal Register/CFR: Automation Report," which contains the following unfortunate assaults on "plain English."

1. "Via magnetic tape." It is possible to go from Washington to Denver via Chicago, but I believe that this Update usage is incorrect (or impossible).
2. "Keyed" as a verb. Possibly not strictly incorrect, but certainly ugly and mechanical-sounding here, and not plain English, but rather computer jargon.
3. "On-line." What **does** on-line really mean? I don't know, and it is not in my unabridged dictionary. Please refer to James Graves' refusal to accept "the specialized audiences argument," on page 4 of the Update (August 1978).
4. "Input." Like "keyed," above, maybe not strictly incorrect, but it is computer jargon, again, and not plain English.
5. "Capture...date." Please define this jargon term. All I can visualize is some poor editor on a horse trying to herd some wild data into a corral.
6. "Processed" words. Are these as unpalatable, and as bad for you as processed foods? I'll bet they are.
7. "This data...becomes." The word "data" is the plural of the word "datum," and thus demands a plural verb. Better to avoid the term altogether, since

data don't become part of Federal Register as frequently as just plain old words do.

8. "Data," again. OFR doesn't produce data, it produces publications.

9. "Rekeyboarding." If I find it impossible to swallow "keyboard" as a verb, what can I say about this piece of computer jargon?

10. "Dial-up telephone connection." This is, at best, redundant, and the same kind of jargon you would expect from people who say "hard copy" when they mean "on paper." It is certainly not plain English.

I believe that both the Update and I, in this letter, have the same goal: to ensure the use of plain English in government publications. I hope you will accept these criticisms as a positive attempt to help the Update toward that goal.

Richard A. Danca
Washington, D.C.

Reminder

Please remember that your comments, suggestions and views on rules and regulations, and on the articles that appear in Update are welcomed. If you wish to comment or submit an article for consideration, please send it to: Update Editor, Office of the Federal Register, NARS, Washington, DC 20408.

If you are interested in this new publication, complete the following and return to:

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Washington, D.C. 20408

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